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ABSTRACT

This background paper for a policy forum provides a framework for discussing the issue of determining eligibility for special education programs and services according to the Individuals with Disabilities Education Act (IDEA). Included is a review of the role of assessment in special education, concerns about assessment practices, and constraints on change. Examples are provided of alternative approaches to improve the eligibility determination process, which have been implemented in Pennsylvania, Iowa, Ohio, Michigan, Florida, and American Samoa. It is suggested that existing special education requirements constrict movement toward using eligibility assessment results to measure a student's current status for important outcomes. It is claimed that there is little if any use of assessment data to plan or evaluate the intervention provided under special education. Although schools are required to review each child's individualized education program at least once a year, there is no requirement that assessments be used to track progress or measure outcomes. Many of the constraints to change involve legal and/or fiscal issues, including the link between categorical identification of a disability and due process and protection of individual rights. (SW)

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RE-EXAMINING ELIGIBILITY UNDER IDEA

A Background Paper Prepared for the
Policy Forum Re-Examining Eligibility Under IDEA

By Eileen M. Ahearn, Ph.D.

Introduction

In the last few years, a spotlight has been turned on the policies and procedures of special education as a result of pressure for change both from within the field and from the nationwide movement for general educational reform. One of the components that has received the most intense scrutiny is the process of determining eligibility under Federal and State statutes and regulations and the way that assessment procedures are used in this process. (See especially Ysseldyke, 1992, Chapter 7.) The accusation is made that assessment in the special education system is focused almost exclusively on qualifying a student for participation in programs and services. For example, despite some increase in the use of new assessment approaches, Ysseldyke observes that "school assessment practices still emphasize dispositional description" (p. 174).

As it is now carried out in most communities, eligibility assessment is an expensive and time-consuming process. Some advocates for change, such as the National Association of State Boards of Education (Roach, 1991, 1992) and the Council of Chief State School Officers (1992), have stated that it is an end in itself, and that it contributes nothing to the planning, delivery or evaluation of the instruction provided to students with disabilities. Repeated calls have been made for revisions in the process, such as the innovations proposed in the California Strategic Plan for Special Education, so that evaluation and testing contribute to the design of instruction, facilitate the writing of an individualized educational program, and support the measurement of student outcomes.

To examine these issues, Project FORUM is convening a policy forum for the Office of Special Education Programs in May, 1993. This paper has been prepared for the participants of that meeting to assist in focusing on the critical issues and establish a common framework for discussion. It includes a review of the role of assessment in special education, concerns about assessment practices, and constraints on change. The paper concludes with some examples of alternative approaches to improve the eligibility determination process.

The Role of Assessment

Access to a free appropriate public education (FAPE) is based on a determination of need for special education or 'eligibility' as this concept has been codified in Federal and State statutes and regulations. The Individuals with Disabilities Education Act (IDEA) and the regulations that implement it have established the framework for evaluating students and providing special education programs and services for those found to be so entitled. Eligibility under IDEA requires that there be demonstration of a disability and that the student needs special education because the disability has a negative impact on the student's educational performance.

Most States have adopted criteria and procedures for establishing eligibility that are more prescriptive than those stipulated in Federal regulations. IDEA requires that a child be assessed in all areas related to the suspected disability and that tests and other evaluation materials be administered in the child's native language (unless it is not feasible to do so), that they be validated for the specific purpose for which they are used, and that they be administered by trained personnel. In addition, evaluations must include tests tailored to assess specific areas of educational need and not be limited to an I.Q. measure. Beyond these caveats, the techniques to be used to establish eligibility are left to State and local education agencies who, over time, have come to rely heavily on qualified evaluators for the selection and administration of norm-referenced tests in making decisions about a student's eligibility for the services and protections of the IDEA.

The category of learning disability is the one exception in the IDEA regulations to the wide level of local discretion in establishing eligibility. Among other requirements, the demonstration of a 'severe discrepancy' between achievement and ability is required by IDEA regulations to qualify a child as eligible under the label of learning disabilities [34 CFR §300.541]. Many States have layered on additional mandated procedures involving the use of specific tests and the interpretation of their results to establish the existence of such a discrepancy. Such requirements frequently include numerical formulas using criteria such as standard score differences or regression equations to establish the size of the discrepancy. The process is sometimes further complicated by provision for an override procedure for use in cases where the State's formula does not confirm a severe discrepancy, but the evaluation team believes the child has a learning disability. The federal regulations require documentation of a severe discrepancy as a criterion of eligibility for learning disabilities, but there is no federally prescribed formula.

The issue of assessment is currently a major topic in general education reform as well. Articles in the popular and professional press often extol the benefits of improved approaches to testing under the general descriptor of 'authentic assessment' that involve

the use of student work portfolios, performance tasks and curriculum-based measures. Questions are being raised about the applicability of such improved measures to the assessment of eligibility for special education. Some recent State efforts (described below) are designed to investigate the use of a broader range of assessments to reduce the existing emphasis on the yes-no nature of the eligibility decision and relate the process more closely to the planning of appropriate instructional intervention.

General educational reform has also stressed accountability, redirecting the traditional focus on input variables such as the number of volumes in a school library in the case of general education, or the number of certified speech therapists in the case of special education. The emphasis has shifted to the assessment of outcomes and a demonstration of the results of educational programs or specific interventions for students, and this change has important implications for assessment. The planning of instructional intervention would become the essence of the assessment process rather than only the identification of a problem. The National Center on Educational Outcomes (NCEO) at the University of Minnesota under funding from the Department of Education, Office of Special Education Programs has designed a model of outcomes, indicators, and measurements that can apply to all students including those with disabilities.

In special education, however, existing requirements serve to constrict any movement toward using eligibility assessment results and information to measure a student's current status for important outcomes. Financial incentives are usually oriented toward the establishment of eligibility for special education. For example, the granting of Federal funds to States under IDEA is based on the number of students in each State's child count, a number that can include only those students whose eligibility for special education services can be fully confirmed by documentation that includes evidence of the testing, team meetings, individualized education programs (IEPs), and required procedural safeguards.

Concerns About Assessment in Special Education

As the assessment process in special education developed, the use of assessment findings for planning instruction, evaluating progress or measuring outcomes has generally been ignored. Rather, testing is done primarily to answer the eligibility question with little link to the specifics of a student's program. Even with the annual IEP review requirement for tracking student progress, there is little if any use of assessment data to plan or evaluate the intervention provided under special education.

Assessment in special education has assumed a gatekeeping function to the almost total exclusion of other uses. The regulations require that "before any action is taken with respect to the initial placement of a child with a disability in a program providing special education and related services, a full and individual evaluation of the child's educational needs must be conducted.." [34 CFR §300.530]. In addition, although schools are required to "initiate and conduct meetings to review each child's IEP...at least once a year" [34 CFR §300.343(d)], there is no requirement that assessments be used to track progress or measure outcomes.

Another consequence of the evolution of practices in special education since the passage of IDEA is the adoption by practitioners of a medical model that is evident in the language commonly used to describe the assessment process. A student is 'diagnosed' through the use of tests, and a 'prescription' is written in the form of an IEP, despite the fact that the findings that result from the tests used to identify a label for eligibility do not dictate 'treatment' in the definitive manner found in medical science. Educational diagnostic tests are most often administered in a separate room by a specialist isolated from any of the environments in which the child lives and performs and with no meaningful link to instruction. Classroom observation may be a small piece of the assessment process, but test results have traditionally been given more weight in determining eligibility for special education programs and services.

Tests used in education, including those used in special education, have also been severely criticized as to their validity - that they actually measure what they claim to be testing. Ample demonstrations exist of bias relative to race, gender and culture inherent in the content of test items as well as the lack of established connection between test items and curriculum content. These and other technical shortcomings are at least as much true of instruments used in special education as they are of the SAT and other more well known tests. Given their questionable technical integrity, tests should never be the sole basis for decision making. Yet, in special education they are frequently the only evidence used to determine eligibility and categorical differentiation, or are at least assigned the most prominent role in that process despite the fact that they were not designed for that purpose.

IDEA regulations require that "tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient," and that "tests and other evaluation materials have been validated for the specific purpose for which they are used" [34 CFR §300.532(a)(2) and §300.532(b)]. These mandates have been a part of the regulations since their passage in 1975, but as Patton (1992) recently observed, "despite abundant evidence of the shortcomings of traditional assessment and identification procedures, the

practice of using unidimensional IQ tests and other norm-referenced tests continues unabated." (p. 151). For many years, educational literature has contained examples of the misinterpretation and misuse of test results, but the preponderance of State special education regulations continue to require that eligibility determinations be based on very specific types of test information. A test may have established validity for use in the process of determining eligibility, but lack validity for educational programming or planning interventions.

There are also many criticisms of the special education assessment process in practical areas such as cost and time. According to Ysseldyke (1992), in some cases, assessment and decision making for special education eligibility may require as much as 13 to 15 hours of professional time (p. 177). It is difficult to formulate an estimate for the average cost of this process because there are so many variable factors. Some writers, nevertheless, have put forth approximations. An early study quoted by Ysseldyke (1992) estimated that assessment costs were as much as $1,800; Moore, Strang, Schwartz and Braddock (1988) cited an average per-pupil cost of $1,206.[1] However, some of the costs included in the derivation of the latter figure (such as IEP development) are for activities that occur beyond the point of establishing eligibility.

Some children's disabilities are clearly evident at birth or at a very early age and they are identified as students with disabilities before school entry. Other students who have learning problems begin exhibiting difficulties in the classroom well before special education is considered as an option, but Federal special education funds cannot be used for instructional intervention either before referral for a formal evaluation, or after a finding of ineligibility. IDEA funds cannot be used for preventive instructional activities with children and budget restrictions in many school districts have reduced the availability of instructional support services under general education. In many school districts, the student must be referred to special education as the only source of assistance, but the evaluation results usually do not provide information that leads to remedial instruction. The extensive eligibility requirements consume a large proportion -- sometimes all -- of the time of experienced school psychologists resulting in little or no time for direct work with students, their teachers and/or their families in early remediation or prevention of problems.

It may well be that assessment using the alternative approaches now under development will be no less expensive than current procedures. However, the proposed alternative assessment processes involve close collaboration between general and special

[1]The figures in this study are stated in 1985-86 dollars.

educators resulting in evaluation results that are directly related to the individual student's programming needs. These revised assessment strategies can contribute specifically to an effective plan to address the student's problem and, if special education is necessary, to the development of an effective IEP, the planning of specific instructional activities and the evaluation of the student's progress.

Constraints on Change

There is a basic concern on the part of many parents and professionals involved in special education that current reform trends may jeopardize the hard-won educational opportunities and rights that the IDEA confers on students with disabilities. They fear that such trends may pave the way for a return to pre-IDEA conditions. Any proposal for change must take into consideration and provide appropriate assurances that the identification of individual children as eligible under special education statutes and regulations continue to guarantee access to FAPE and procedural safeguards.

The challenge of eliminating the disadvantages of current procedures for establishing eligibility while maintaining the protections of the IDEA and §504 of the Rehabilitation Act of 1973 is complex. Many of the issues involved are legal and/or fiscal in nature. For example: Can due process rights be protected under a system that does not label each individual student as eligible for special protections? Or, can there be a system in which individual children's rights are protected without categorical identification? Can alternative assessment procedures that are more relevant for instructional such as curriculum-based measurement (CBM) also be used to establish eligibility? Would such procedures meet the regulatory requirements for validity if used to establish eligibility? Can funds earmarked for special education be used for instructional services without prior identification of the child as a student with disabilities? On what basis will Federal and State funds be allocated for special education if not by a count of students identified as eligible? Will funds intended for services to students with disabilities be diverted into regular classrooms with personnel who are not qualified to teach children and youth with disabilities?

Liability issues for schools and their staffs must also be taken into consideration in the design and study of new approaches that involve performance-based and other alternative forms of evaluating students' presenting problems, a much stronger preference for addressing those problems within regular education, and a decrease in the use of norm referenced tests to establish eligibility for special education. Personnel, especially psychologists, will have to be prepared to use technically sound assessment techniques to avoid the perception that their evaluation is inadequate because it is not supported by the use of tests that have recognized status in the field.

School districts may become susceptible to lawsuits as well based on the denial of rights to students. For example, charges of discrimination in testing, identification, or placement may be brought on behalf of a student who is involved in a pilot test that seeks to meet student needs that would ordinarily prompt a referral to special education in a non-traditional way without changes in laws or regulations.

It is clear that changes in assessment for eligibility of the magnitude needed to eliminate existing disadvantages will reorient the way special education programs and services are provided. Appropriately trained staff to implement new assessment procedures will be needed. In addition, there will be a need for staff development for regular classroom teachers whose roles will change dramatically under most of the proposed reforms.

Decisions for change will involve the weighing of costs vs. benefits. The debates promise to be lively, entailing many, sometimes conflicting, value judgments and perspectives.

Examples of Alternative Approaches

A variety of innovations are being explored and implemented by States to improve the eligibility determination process in special education and programming for students with disabilities. The following snapshots of pilot programs in a few States are offered to contribute to the discussion to take place at the policy forum.

Pennsylvania: According to Joseph Kovaleski, the Instructional Support Team (IST) Project of which he is Director is revolutionizing the process of establishing eligibility. Students who are not progressing are screened under the direction of the school's IST using curriculum-based and other types of assessment measures. The initial intervention is planned to occur within the regular classroom setting. The teams have three required members: the classroom teacher, the principal, and the support teacher. Other members can be added at the discretion of each school. The support teacher's role is to do assessments and provide specific interventions in order to find out what works for the individual student and what level of support is needed for that student to succeed. Presently, the State is providing the training and funding for the implementation of this approach which will be in place in all school districts by the end of the 1994-95 school year. One of the goals of Pennsylvania's initiative is to reduce the number of students identified as eligible for special education. Another broader goal is to enhance the general education setting's ability to serve the individual needs of all students.

The focus of the new process in Pennsylvania is a revised approach to dealing with students who are experiencing difficulty in the regular class program. Rather than immediately assuming that the failure to learn is due to some defect within the student, new procedures call for a focus on determining the student's functional ability in the classroom and the ability of that program to maintain the student as successful. This approach reverses the order of answering the two questions that are involved in establishing eligibility. What is usually the first question - Is the student disabled? - is no longer asked first. Rather, the attention is initially focused on the second question - Does the student need special education? If interventions can be devised and implemented by regular teachers in regular classes so that the student can be successful in the regular classroom, the question of disability does not need to be raised. Regardless of whether it could be established that the student qualifies as a student with a disability, a positive response to the question now posed first obviates the need to consider the existence of a disability. If the student's rate of progress under the planned intervention is not acceptable, then a multidisciplinary evaluation is initiated to determine the presence of a disability and to assess the need for special education. One of the results of this changed procedure has been a realization on the part of many staff that they do not need to use norm referenced tests that had been a basic part of assessment for eligibility in the past. In most cases, the newer longitudinal assessment process provides more valid and useful data for planning intervention and writing IEPs.

There are obvious funding implications in Pennsylvania's approach, some of which have been addressed at the State level. The new funding structure apportions funds based on the number of enrolled students rather than an exact count of children receiving services under special education. Using a formula that takes the school's 'average daily membership,' Pennsylvania allocates a flat amount of its State special education funds for a percentage of those students. The implementation of the new regulations with this revised funding mechanism has received much attention throughout the country, and it is quite controversial within the State.

Iowa: Iowa is implementing a version of the 'teacher assistance team' as part of a problem-solving model being used as an alternative to the traditional methods of eligibility determination. Jeff Grimes, School Psychology Consultant for the Iowa Department of Special Education, describes the new approach as a successful one that has yielded data to support the strength and utility of the direction they are taking. A functional assessment is designed for a student to coincide with the major concerns of the teacher. Rather than assess for a label or a disability, the magnitude of the disruption of the educational process is evaluated. The new approach is considered to be simpler and more direct because it concentrates on changing the student's performance on the specific indicators of concern. It replaces the traditional strategy of establishing a connection to

a label that is only a conceptual construct not associated with specific interventions or outcomes.

The changed process involves a cooperative effort by special education and regular education teachers in a substantive effort to provide early intervention prior to referral for special education services, replacing the ineffectual pre-referral process that had been considered solely a regular education responsibility. The structuring, monitoring and, in some cases, delivery of the intervention is done jointly at the building team level. To enable the demonstration projects to proceed without 'turf' issues over funding, the State Department of Education will grant waivers and provide training and support using discretionary funds.

The revised process requires that IEP goals and objectives be developed to facilitate the intervention. The goals and objectives are operationally defined to address specifically the presenting behavior and to be measurable on a regular basis. As an advanced step, the process is now being connected to the framework proposed by NCEO for outcome domains and indicators. The basic concept is that the identity of special education as a service delivery system is not in the disability, but in the services being provided to students.

Iowa believes that its new approach can advance public understanding and support for special education. Last December, Iowa did a perception survey of over 2,100 school personnel from both regular and special education and found very strong support for the new system.

Ohio: Ohio is also in the process of reviewing and revising all its rules and regulations for education. One of the task forces has developed a draft "Assessment and Intervention Model" for consideration in the design of a new process for establishing eligibility for special education. As explained by Cynthia Reighard of the Ohio Department of Special Education, this proposal illustrates the importance of starting with the development of a vision to set the direction that needs to be taken rather than attempting to institute change by proposing specific revisions to existing procedures.

The task force recommends a problem-solving approach to analyzing the needs of a student experiencing problems in learning. The proposal must be understood as a highly structured technique for information gathering in order to make a decision about disabilities. It is based on a belief that all students can learn and involves the identification of a reasonable instructional approach for students who exhibit difficulties in meeting desired outcomes. No longer is the decision based on numerical results from tests. If the needed intervention is highly intensive and specialized, special education may

be necessary and the disability determination will hinge upon the degree to which interventions to attain expected student outcomes are uniquely different from instructional programming currently being implemented for the target student's peer group.

Pilot projects incorporating elements of the Iowa and Pennsylvania models are being incorporated into the work of 30 evaluation teams chosen by the Ohio SEA on the basis of applications. Waivers have been granted from State regulations and each team is required to document its revisions.

Michigan: The Michigan model, developed for the Department of Education under the direction of William Frey, has produced specific lists of outcomes for students based on the category of disability with specific assessments indicated for measuring the expected outcomes. Materials produced about the model caution that the assessments should not be used for establishing eligibility because they were not designed for that purpose. However, some regular education teachers have found them to be relevant to day-to-day student performance in context and in many instances have found it unnecessary to proceed with a referral to special education after using the assessments.

Florida: More recent work in Florida by the consultants who developed the Michigan model considers dividing disability categories into three groups characterized by the needs students can be projected to have as adults, i.e., extensive assistance, moderate support, or unaided adult functioning. Additional experimentation is being conducted to apply the latter category to all students in an effort to identify regular education students who also need support.

American Samoa: With technical assistance from Clay Starlin of the Western Regional Resource Center (WRRC), American Samoa has instituted a non-categorical eligibility process. The curriculum and official language of instruction in the schools is English. However, most students come to school speaking only Samoan. To accommodate the large proportion of students needing extra support, an Intensive Educational Support Program (IESP) was developed and is supported with special education funds. The IESP involves curriculum-based screening of the entire school population in critical academic skills and identifying the lowest performing one-third of the students. Through a consulting teacher model, classroom teachers are supported in working with these students. Students who do not make satisfactory improvement in the IESP process are considered eligible for special education. An individual assessment is then conducted to determine what specially designed instruction is required. This process identifies 2% to 3% of the school population as eligible for special education without categorical labels.

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